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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/487,383	01/18/00	BEDFORD	68019

022242 HM22/0613  
FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
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CHICAGO IL 60603-3406

EXAMINER
MELLER, M

ART UNIT	PAPER NUMBER
1651	13

DATE MAILED: 06/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. 09/487,383	Applicant(s) BEDFORD ET AL.	
	Examiner Michael V. Meller	Art Unit 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 May 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,6-8,13,15 and 17-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-8,13,15 and 17-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- |   |  |
|---|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 20) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

Claims 1, 3, 4, 6-8, 13, 15, 17, 19-29 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2,287,867 (GB).

Applicant argues that there is no suggestion in GB that the xylanase or cellulase would have any effect whatsoever on infections caused by *Salmonella*, *Campylobacter* or *Clostridium*. Applicant also argues that the reference does not teach that the enzymes disclosed would be effective in treating any kind of bacterial infection as feed producers have routinely and commonly added antibiotics to their feed in order to prevent and treat bacterial infections.

Applicant's claims are directed to giving a xylanase or beta-glucanase to an animal via an animal feed. This is all the claims require. The process is a one step process which clearly reads on the reference. Applicants have not added any different steps to the method. Thus, the method of the instant claims and the method in the reference are the same.

It is inherent to the process of the reference and applicant's invention that infections caused by *Salmonella*, *Campylobacter* or *Clostridium* will be treated or

prevented upon the administration of the xylanase or beta-glucanase. There is nothing found in the process of applicant's invention that differs from the process of GB. Since the same composition is being administered to the animal in both the reference and the instant invention, the claims are so anticipated.

Claims 1, 3, 4, 6-8, 13, 15, 17-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Bedford et al. ('055).

Applicant argues that there is no suggestion in '055 that the xylanase or cellulase would have any effect whatsoever on infections caused by *Salmonella*, *Campylobacter* or *Clostridium*. Applicant also argues that the reference does not teach that the enzymes disclosed would be effective in treating any kind of bacterial infection as feed producers have routinely and commonly added antibiotics to their feed in order to prevent and treat bacterial infections.

Applicant's claims are directed to giving a xylanase or beta-glucanase to an animal via an animal feed. This is all the claims require. The process is a one step process which clearly reads on the reference. Applicants have not added any different steps to the method. Thus, the method of the instant claims and the method in the reference are the same.

It is inherent to the process of the reference and applicant's invention that infections caused by *Salmonella*, *Campylobacter* or *Clostridium* will be treated or prevented upon the administration of the xylanase or beta-glucanase. There is nothing found in the process of applicant's invention that differs from the process of '055. Since

Art Unit: 1651

the same composition is being administered to the animal in both the reference and the instant invention, the claims are so anticipated.

Claims 1, 3, 4, 6-8, 13, 15, 17, 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Clarkson et al.

Applicant argues that the reference does not describe or suggest a method for treating or preventing bacterial infections in animals as claimed. Applicant also argues that there is no suggestion in Clarkson that the xylanase would have any effect whatsoever on *Salmonella*, *Campylobacter* or *Clostridium*, either in the feed or an animal. Applicant finally argues that the reference does not teach a method of using enzymes for treating or preventing infections caused *Salmonella*, *Campylobacter* or *Clostridium* in an animal as claimed.

Applicant's claims are directed to giving a xylanase to an animal via an animal feed. This is all the claims require. The process is a one step process which clearly reads on the reference. Applicants have not added any different steps to the method. Thus, the method of the instant claims and the method in the reference are the same.

It is inherent to the process of the reference and applicant's invention that infections caused by *Salmonella*, *Campylobacter* or *Clostridium* will be treated or prevented upon the administration of the xylanase. There is nothing found in the process of applicant's invention that differs from the process of Clarkson. Since the same composition is being administered to the animal in both the reference and the instant invention, the claims are so anticipated.

Claims 1, 3, 4, 6-8, 13, 15, 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Hansen et al.

Applicant argues that the reference does not describe or suggest a method for preventing infections in animals caused by *Salmonella*, *Campylobacter* or *Clostridium* in animals as claimed. Applicant also argues that there is no suggestion in Hansen regarding a method for preventing or treating infections caused by bacteria in an animal or in the feed.

Applicant's claims are directed to giving a xylanase to an animal via an animal feed. This is all the claims require. The process is a one step process which clearly reads on the reference. Applicants have not added any different steps to the method. Thus, the method of the instant claims and the method in the reference are the same.

It is inherent to the process of the reference and applicant's invention that infections caused by *Salmonella*, *Campylobacter* or *Clostridium* will be treated or prevented upon the administration of the xylanase. There is nothing found in the process of applicant's invention that differs from the process of Hansen. Since the same composition is being administered to the animal in both the reference and the instant invention, the claims are so anticipated.

Claims 21-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Borriss et al., see abstract, col. 3, line 62-col. 4, line 12, col. 11, line 65-col. 12, line 23, and the claims.

The reference teaches that wheat expresses a beta-glucanase and that such a composition is added to a feed to be given to animals.

Claims 1, 3, 4, 6-8, 13, 15, 17-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Bedford et al. '678 ('678), see abstract, example 1, and the claims.

The reference teaches that xylanase or a beta-glucanase is added to an animal feed also containing wheat and then given to an animal.

### ***Claim Rejections - 35 USC § 103***

Claims 1, 3, 4, 6-8, 13, 15, 17-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2,287,867 in view of Bedford '055 or Bedford '678.

Applicant argues that the mere fact that the feed additives have been given to chickens and chickens are known to suffer from *Salmonella* infections would not lead one of ordinary skill in the art to believe that such an additive would have any effect on such an infection.

Applicant's claims are directed to giving a xylanase and/or beta-glucanase to an animal via an animal feed. This is all the claims require. The process is a one step process which clearly reads on the reference. Applicants have not added any different

steps to the method. Thus, the method of the instant claims and the method in the reference are the same.

It is inherent to the process of the reference and applicant's invention that infections caused by *Salmonella*, *Campylobacter* or *Clostridium* will be treated or prevented upon the administration of the xylanase. There is nothing found in the process of applicant's invention that differs from the process of the references. Since the same composition is being administered to the animal in both the reference and the instant invention, the claims are so anticipated.

Claims 1, 3, 4, 6-8, 13, 15, 17-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarkson et al. in view of Bedford '055 or Bedford '678.

Applicant argues that the references teach nothing regarding the use of xylanase in treating or preventing bacterial infections. Further applicant argues that the combination of references would not teach one that xylanase or cellulase additions to feeds would be effective in preventing or treating bacterial infections.

Applicant's claims are directed to giving a xylanase and/or beta-glucanase to an animal via an animal feed. This is all the claims require. The process is a one step process which clearly reads on the reference. Applicants have not added any different steps to the method. Thus, the method of the instant claims and the method in the reference are the same.

It is inherent to the process of the reference and applicant's invention that infections caused by *Salmonella*, *Campylobacter* or *Clostridium* will be treated or



prevented upon the administration of the xylanase. There is nothing found in the process of applicant's invention that differs from the process of the references. Since the same composition is being administered to the animal in both the reference and the instant invention, the claims are so anticipated.

Claims 1, 3, 4, 6-8, 13, 15, 17-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. in view of GB 2,287,867.

Applicants argue that these references make no mention of the use of these enzymes in a method for treating bacterial infections caused by specific bacteria as claimed. Further, applicants argues that there is no mention made that the enzymes themselves have any effect whatsoever on the harmful bacteria, either in the feed or in the animal.

Applicant's claims are directed to giving a xylanase and/or beta-glucanase to an animal via an animal feed. This is all the claims require. The process is a one step process which clearly reads on the reference. Applicants have not added any different steps to the method. Thus, the method of the instant claims and the method in the reference are the same.

It is inherent to the process of the reference and applicant's invention that infections caused by *Salmonella*, *Campylobacter* or *Clostridium* will be treated or prevented upon the administration of the xylanase. There is nothing found in the process of applicant's invention that differs from the process of the references. Since

Art Unit: 1651

the same composition is being administered to the animal in both the reference and the instant invention, the claims are so anticipated.

Claims 1, 3, 4, 6-8, 13, 15, 17-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borriss et al. in view of Bedford et al. '055 or Bedford et al. '678.

The teachings of Borriss are above. Borriss does not teach to use a xylanase instead of a beta-glucanase.

The Bedford references clearly teach that xylanases or beta-glucanases can be used interchangeably in the feed composition.

It would have been obvious to change the feed composition of Borriss from one containing beta-glucanase to one containing xylanase since both enzymes are taught by the Bedford references as being interchangeable and equally effective in being used in feed compositions for treating diseases and/or help digestibility of the feed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 10:30am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

Application/Control Number: 09/487,383

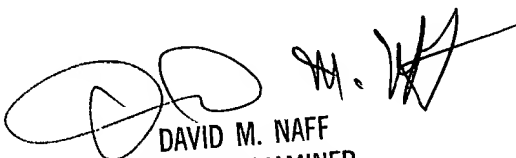
Page 10

Art Unit: 1651

308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

MVM  
June 11, 2001

  
DAVID M. NAFF  
PRIMARY EXAMINER  
ART UNIT 1651